

NTSB Order No. EA-4293

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 18th day of November, 1994

Docket SE-13241

## 6441

was docketed as SE-13065.<sup>2</sup> Prior to the scheduled hearing, law judge Coffman issued an order terminating the proceeding. The order, entered May 28, 1993, stated "[b]oth counsel have advised the Board that this matter has been settled and a hearing will not be necessary." No appeal of that order was taken.

On July 14, 1993, the Administrator issued what he titled "Amendment to Emergency Order of Revocation" against respondent. The order provided, in part, that the emergency order "issued in this case on March 31, 1993 is, hereby, converted to an Order of Suspension." The order also provided that all respondent's certificates were suspended, effective March 31, 1993, until he was determined to be qualified to hold a medical certificate. By letter dated August 2, 1993, respondent appealed the order of suspension to this Board. The letter indicated that the appeal was taken as a precautionary measure because, although the "parties apparently have an agreement to settle this matter," respondent did not believe that the FAA had satisfied its portion of the agreement.<sup>3</sup>

The Administrator did not thereafter file the order of suspension as his complaint. See 49 C.F.R. 821.31. Instead, he filed a motion to dismiss respondent's appeal. The motion recited that respondent had agreed to settle the case and

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<sup>2</sup>The record indicates that respondent surrendered his certificates soon after the order was issued.

<sup>3</sup>The letter stated "the FAA's obligation under that agreement is executory, the FAA's performance has not taken place, and is indefinite."

specifically had waived his right to appeal the amended order (i.e., the order of suspension). The Administrator alleged that he had met his obligation under the settlement agreement and that, in any case, that was not an issue for the Board.

Respondent replied that he had a right to a hearing on his appeal from the FAA's order and had a right to a factual hearing to determine "rights under a purported agreement," but that a hearing would be unnecessary "if there is an agreement and the FAA is living up to it."

The Administrator followed with a memorandum in support of his motion, attaching a Memorandum of Understanding, signed by both parties and dated by the Administrator May 11, 1993 (prior to law judge Coffman's May 28 dismissal order in SE-13065). This document provided, among other things, for reforming the emergency order as a suspension order, and stated:

4. Respondent shall withdraw his appeal now pending before the National Transportation Safety Board and shall agree to perfect no other appeal relating to this matter.

Respondent replied, suggesting that the memorandum the Administrator submitted was not the "purported agreement," and the Administrator filed a second memorandum in support of his motion noting various details in the sequence of events. Law judge Fowler then issued the order to which the appeal pending before us is directed.

Respondent first argues that he did not waive the right to appeal the suspension order and that any determination to that effect must be made in a factual hearing, not on the

"nontestimonial assertions by FAA counsel" on which, he argues, the law judge relied. In support, respondent claims that the purported agreement was not legally consummated because the FAA never signed it to signify agreement with the written changes respondent had made. Respondent next claims that the parties did reach some agreement but, because the FAA did not live up to its promise to expedite consideration of respondent's medical application, respondent was not bound not to appeal the order of suspension. Lastly, respondent argues that, because the FAA never filed its order as the complaint in this case, the proceeding must be dismissed.

The Board has consistently held that it will not adjudicate the merits or satisfaction of settlement agreements. Once an agreement is entered, and the Board's order dismissing the proceeding is administratively final, any remedy for breach of the agreement is to be had, if at all, in the courts.

Administrator v. Hegner, 5 NTSB 148 (1985). Respondent did not appeal law judge Coffman's termination of the proceeding, although more than 2 weeks elapsed between his revision to and return of the memorandum of understanding to the FAA. If he had any questions about the FAA's acceptance of his changes, that was the time and place to raise them. Moreover, not only does respondent not contest the Administrator's statement that he agreed orally with respondent's changes, the FAA went forward with implementing the agreement when it amended the order of revocation, thus also suggesting that it had accepted

respondent's changes.<sup>4</sup> For these reasons and others,<sup>5</sup> we can not accept respondent's argument that the parties reached no agreement. Moreover, respondent raises no issues regarding the agreement that would warrant a hearing to investigate. Accord Administrator v. Rippee, 4 NTSB 1041 (1983).

Further, although the FAA never filed its order as the complaint in this case, under the terms of the agreement it expected no challenge from respondent, and its motion to dismiss respondent's appeal was an acceptable response in the circumstances. Were respondent to prevail in this argument, he would receive the benefit of dismissal of the order of revocation without any action or concession on his part, clearly an inequitable result. See Application of Mark J. Cross, NTSB Order EA-3601 (1992) at 6.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The initial decision granting the Administrator's motion to dismiss and terminating this proceeding is affirmed.

HALL, Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. Member VOGT did not concur.

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<sup>4</sup>Respondent's most significant change was to add a sentence requiring that the FAA expedite its determination (presumably regarding respondent's eligibility for a medical certificate).

<sup>5</sup>I.e., throughout his pleadings, respondent often acknowledges the existence of an agreement with the FAA. It would appear that he is either dissatisfied with the agreement he made or is dissatisfied with the FAA's failure promptly to issue him a medical certificate.